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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,684	11/05/2003	Jacob J. Thomas	0310-2	1122

7590

06/09/2005

Robert E. Howard  
P.O. Box 10345  
Eugene, OR 97440

EXAMINER
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WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/702,684

Applicant(s)

THOMAS ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11,13,15,16 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11,13,15,16, & 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 15, 16, 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilton Book of Candy in view of Candy, Good Cook Techniques and Recipes, Kennedy, Moore, Rernard, Ito and applicant's admission of the prior art.

In regard to claim 11, Wilton Book of Candy discloses a process of forming an edible ice cream cone having a composition that is a transparent edible glass comprising preparing a high-boiled composition of a sugar syrup, forming the high boiled composition into at least one circular disk on a surface, removing the circular disk from the surface and while the circular disk is still pliable, wrapping the circular disk around a mold shaped like the intended edible container to form the edible container. Candy (Good Cook Techniques and Recipes) is further evidence of making molded transparent candy. Claim differs from Wilton Book of Candy primarily in the shape that is imparted to the circular disk and the particular apparatus employed (the latter not seen to be limiting in a method claim). Wilton shapes the circular candy disk into a bowl or candy shape whereas claim 11 recites a cone shape. Once it was known to make molded transparent candy to simulate well known shapes, the particular conventional shape one chooses to impart to the candy disk and the particular conventional molding equipment used to mold the circular disk into the conventional shape is seen to have

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been an obvious matter of design in view of the art taken as a whole. This is especially true in view of Kennedy, Moore, Renaud and Ito. As discussed in the last Office action, Kennedy evidences the fact that cone-shaped edibles made of candy and intended to be used as ice cream cones are conventional. Thus, applicant is not the first to make a cone out of material that is not a baked product. Moore evidences the fact that it was further conventional in the art to employ a candy cone shaped ice cream holder. Renaud and Ito are relied on as further evidence to show it is notoriously conventional to mold edible cones employing an edible disk as a starting material, which is then given a cone shape with Ito further teaching the shaping step can include a platen and mandrel. Applicant's admission of the prior art evidences the fact that employing a circular platen with waffle patterns to mold a moldable or castable material is also conventional. To modify Wilton and impart a cone shape would therefore have been obvious in view of the conventionality of providing candy with a cone shape, and the conventionality of employing circular platens and mandrels to impart a cone shape to edible, moldable edibles. Applicant has employed general conventional expedients in the art and employed them for their well known and intended function with no new or unexpected result therefrom.

In regard to claim 15, which now differs from original claim 15 in the recitation of a thickness of the disk, the particular thickness of the disk is seen to have been at most an obvious result effective variable and an obvious function of the thickness desired, viscosity, etc.

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Claims 13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilton Book of Candy in view of Candy, Good Cook Techniques and Recipes, Kennedy, and Moore, in view of Hoffman et al, Ogata et al, Sakuma and Morimoto et al, further in view of Wilton (1994), Disney's Family Cook Book, Product of Alert, HFD, Cincinnati Post and Oregonian for the reasons given in the Office action mailed November 10, 2004.

All of applicants urgings filed March 14, 2005 have been fully and carefully considered but are not found to be convincing. As noted above, the invention is directed to employing a conventional candy composition which is known for its transparency and which is known for its ability to be poured into a circular disk shape and then shaped around a perform to impart an edible container shape and wherein the invention imparts to the conventional candy another conventional shape using conventional shaping equipment. The references are all properly combinable since they all are directed to edible, shapeable (or moldable) products. It is urged that there is no suggestion to combine the references. The first Office action and now this Office action clearly and thoroughly details why the references are properly combinable. As for the thickness of the disk, as noted previously and above, the thickness would have been an obvious result effective variable, obviously determinable through routine determination, if indeed the references do not already inherently employ these thicknesses.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh  
June 6, 2005

*Steven Weinstein*  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER** 1761